

## **Kunkel, Mark**

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**From:** Kunkel, Mark  
**Sent:** Tuesday, January 24, 2012 5:03 PM  
**To:** Froelich, Brooke  
**Cc:** Kahler, Pam  
**Subject:** Service contract draft

Brooke:

In advance of tomorrow's conference call, here are some issues to resolve. The page numbers mentioned below correspond to the page numbers of the most recent document that you sent to us.

-- Mark

### ***Reimbursement insurance policies***

Page 4: the 2nd definition of "reimbursement insurance policy" refers to a policy issued to a provider that provides additional coverage that does not conflict with the other definition of "reimbursement insurance policy." This language is too vague – it could refer to any other type of insurance issued to a provider, even property or health insurance. If a policy is issued that provides additional coverage for performance of service contracts, would the definition be any different from the single one in the draft? If so, the difference is what you need to describe. If not, you do not need it.

### ***Warranty plan exemption***

Page 26: We would move this exemption from 100.70 (8) to 100.70 (2), which covers other exemptions from 100.70.

The instructions refer to a person registered as a warranty plan or warranty plan administrator. Can we revise the exemption to refer instead to a person whom OCI has issued, prior to the effective date of the bill, a certificate of authority, which we can define, based on s. Ins. 15.01 (4) (a), Wis. Adm. Code as "a limited certificate of insurance authority to operate a warranty business in this state that is issued by the commissioner under rules promulgated by [OCI]."? It appears that both warrantors and warranty plan administrators obtain the same certificate of authority under OCI's rules. Therefore, we could refer to a person issued a certificate of authority, rather than to a warrantor or warranty plan administrator who is issued the certificate.

Is it okay to limit the exemption to persons issued certificates before the effective date of the bill, or should the exemption apply a person issued a certificate before or after the bill's effective date?

Is there a deadline by which a person must make an election? Once a person makes an election, can the person make a new election? For example, can a person who elects to be exempt from s. 100.70 subsequently have a change of mind and elect to be subject to s. 100.70, and vice versa?

How will OCI know whether a person has elected to be subject to or exempt from s. 100.70? What happens if a person fails to make such an election?

### ***Enforcement***

Page 25: 100.70 (7) (a) allows OCI to take action regarding insurers. However, OCI already has that authority under current law, so why is the authority restated here?

Page 25, 100.70 (7) (b) refers to s. 601.41. However, the only relevant parts of s. 601.41 appear to be 601.41 (4) and (5), so we would revise the reference accordingly.

In general, is the intent to allow OCI to enforce 100.70 by doing anything allowed under ss. 601.41, 601.43 to 601.45, and 601.61 to 601.73? If so, why not amend those statutes to make your intent clearer? For example, you could amend 601.41 (1) to require OCI to administer and enforce 100.70. Regarding penalties, we assume that you want to allow OCI to obtain penalties under s. 601.64. However, s. 601.64 itself is limited to specified statutes. To make it clear that those penalties apply to 100.70, you could amend 601.64 to specifically mention 100.70.

### ***Service contract sellers***

Page 6: the definition of "service contract seller" seems inconsistent with the definition of "administration," which includes the collection of provider fees from service contract sellers. Therefore, it seems that a service contract seller is involved with administration. Perhaps the definition should be revised to say that the person's involvement with administration is limited to remitting provider fees to an administrator?

Also, the definition refers to a service contract "program." Why not refer instead to involvement in the administration of service contracts, and delete "program"?

Page 16: 100.70 (3) (j) creates an exemption for service contract sellers that is not necessary. Providers, not service contract sellers, are subject to licensure. Administrators, not service contract sellers, are subject to registration. The bill does not create any other licensure or registration requirements that could apply to a service contract seller, nor does the bill include any language that allows OCI to impose such requirements on a service contract seller. If you are concerned that OCI might promulgate rules on this issue, you could specifically prohibit OCI from promulgating such rules. However, it does not appear that OCI would have any authority for the rules.

Page 26: should the reference to "sellers" in 600.01 (1) (b) 12. be changed to "service contract sellers"? *Yes*

### ***Motor vehicle manufacturers exemption***

Page 7: 100.70 (2) (b) should refer to sub. (7) (enforcement), rather than sub. (8), correct?

Under the exemption, motor vehicle manufacturers' service contracts are not subject to 100.70 (3) (f), but are subject to 100.70 (4) (d) and (e), which refer to 100.70 (3) (f). If the contracts are exempt from 100.70 (3) (f), shouldn't they also be exempt from 100.70 (4) (d) and (e)?

Motor vehicle manufacturers' service contracts are exempt from 100.70 (3) (a), which allows a provider to appoint an administrator. 100.70 (3) (a) also imposes liability on a provider for violations committed by an appointed administrator. We assume that a manufacturer, without relying on 100.70 (3) (a), could appoint an administrator. If a manufacturer were to appoint an administrator without relying on 100.70 (3) (a) to do so, the result appears to be that the manufacturer would not be liable under 100.70 (3) (a) for violations committed by the administrator. Is that okay?

### ***Acting as a provider***

Page 6: the definition of "service contract seller" refers to acting as a provider. What constitutes acting as a provider? "Provider" is defined as a person who is contractually obligated to a service contract holder under the terms of a service contract. Based on that definition, the only relevant act is the entering into a contractual obligation under a service contract. Does doing anything else constitute acting as a provider? If so, please let us know so that we can revise the definition. If not, we recommend revising the above so that it refers to a person who is not a provider, rather than referring to a person who is not acting as a provider. Also note that the bill prohibits a person from acting as a provider unless the person is licensed by OCI or applies for a license by a specified deadline. See s. 100.70 (3) (d) 1., 2., and 3. on pages 9 and 10. If the only relevant act is the entering into a contractual obligation to a service contract holder under a service contract, we would revise those prohibitions to refer to a person entering into such a contractual obligation, rather than referring to a person acting as a provider.

### ***Deposit of securities or letter of credit***

Page 14: in 100.70 (3) (g) 2., we assume the letter of credit must be acceptable to OCI. However, you could also read the provision as saying that the bank must be acceptable to OCI. *Yes*

Page 15: what is the "current year" in 100.70 (3) (g) 3.? Is it the year in which a provider submits an application for initial licensure? Or does the amount of security change every year? *Yes*

Page 15: in 100.70 (3) (h) (financial statements), the references to most recent fiscal year and preceding fiscal year may need to be clarified. Is the financial statement requirement a one-time requirement, or does it apply on an ongoing basis each time there is a new fiscal year? If it is a one-time requirement, we would revise the language to refer to the fiscal year prior to the year in which the provider applies for a license. If it is an ongoing requirement, we would revise the language to refer to each fiscal year. *each year*

### ***False or misleading statements***

Page 22: 100.70 (5) (b) 1. includes the following: "Filing a report and, with intent to deceive a person examining it, making a false entry in a record or willfully refraining from making a proper entry, are 'statements' within the meaning of this paragraph." We're not sure why the foregoing is necessary. 100.70 (5) (b) 1. prohibits making a false or misleading

statement. If you are concerned that "statement" may be interpreted to not include a report or record, then the prohibition can be revised to prohibit making a false or misleading statement, report, or record. As for defining "statement" to include the willful refraining from making a proper entry, we're not sure what that accomplishes. With respect to intent, do you want to revise the prohibition so that it prohibits only those statements are intentionally false or misleading? Finally, note that we would substitute "intentionally" for "willfully."

Page 22 to 23: in 100.70 (5) (b) 2., we don't understand the relationship of "having reference to a particular provider..." to the rest of the sentence. Does the card, document, sign, or advertisement have to refer to a provider? Is that what you mean by "reference"? Or can the card, document, sign, or advertisement have a reference with actually mentioning the provider?

Also, with respect to an administrator, the rebuttable presumption under 100.70 (5) (b) 2. conflicts with 100.70 (3) (a), which says that a provider is liable for any violations of this section committed by an administrator. How do you want to resolve that conflict? Also, with respect to a representative, would a provider be able to rebut the presumption by proving that the representative, and not the provider, committed the violation? Or would the provider have to prove something else?

### **Miscellaneous**

Page 1: the definition of "administration" refers to "service contract provider," but the defined term is "provider," so we will use "provider."

Page 2: 100.70 (1) (a) 4. refers to collecting provider fees and remitting such funds. We would revise to refer to collecting provider fees and remitting the fees.

Page 8: Instead of saying in 100.70 (3) (a) that the acts of an administrator appointed by a provider ... shall be imputed to the provider, we think it is clearer to say that a provider is liable for violation of s. 100.70 committed by an administrator appointed by the provider.

Page 8: 100.70 (3) (a) 1. refers to "residence address." Is that different than a business address?

Page 9: 100.70 (3) (d) 1. prohibits acting as a provider "in this state." Is confusion possible over whether actions occur in this state? Is the intent to apply to an out-of-state provider who enters into a contract with a state resident? If so, you could revise the prohibition accordingly.

Page 9: 100.70 (3) (d) 2. refers to an "authorized" provider. What does "authorized" mean? By whom and how?

Page 10: we suggest revising 100.70 (3) (d) 3. d. to refer to the person's name, full business address, and telephone number.

Page 10: 100.70 (3) (d) 3. h. refers to annual fees in the midst of what is required in an application for an initial license. We would move the annual fee requirement to its own subdivision.

Page 16: 100.70 (4) (a) refers to a "typed facsimile." One of the dictionary definitions of "facsimile" is an exact copy. Is that what you mean? If so, doesn't requiring contracts to be filed in final printed format exactly as they will be offered accomplish your intent?

Page 16: 100.70 (4) (b) refers to a "certificate of compliance and readability." Do you mean that an officer of a provider or administrator must certify that the contracts comply with 100.70 (4) and are readable? Also, what is the legal significance of requiring such certification? The bill already requires compliance and readability, so the certification seems redundant. Or is the certification requirement intended to subject the certifier to penalties for an improper certification? If so, what are those penalties?

Page 20: 100.70 (4) (L) 4. refers to a "gross" provider fee. What does that mean?

Page 21: the 3rd sentence in 100.70 (4) (o) repeats the requirement in the 2nd sentence that a service contract is void only if no claim has been made prior to return of the contract. There is no need to repeat the requirement in the 3rd sentence.

Page 21: 100.70 (4) (o) and (p) refer to a 10 percent penalty. Is that 10 percent of the full purchase price or 10 percent of something else?

Page 23: 100.70 (5) (d) 4. refers to a requirement that a motor vehicle owner "register" for a new motor vehicle service contract. Instead of "register," why not refer to "purchase" instead?

Page 25, 100.70 (6) (a) 4. refers to "hard copy." Why not refer to "printed copy" instead, if that's what hard copy means?



Wisconsin Office of the  
**Commissioner of Insurance**



[Company](#) > [Forms & Packets](#) > [Application for Licensure/Registration/Renewal](#)

**Application for A Limited Certificate of Authority  
Warranty Plan  
Chapter Ins 15, Wis. Adm. Code**

**Note:** The following address is a link to the administrative code in pdf format:

<http://www.legis.state.wi.us/rsb/code/ins/>

To link to chapters in the administrative code, add insxxx.pdf to the end of the address. xxx represents the chapter number in three digits (003 for chapter 3).

The following are documents which must be completed and returned with the Application for Limited Certificate of Authority for a Warranty Plan. Any questions about the application should be directed to Mr. Karl Albert (608-264-6236) or Mr. Steve Junior (608-267-4388).

Also included is information detailing the procedures for submitting the warranty contracts for approval. All warranty contracts must be approved before the certificate of authority will be issued. Any questions about the policy form procedures should be directed to Ms. Ellen Vigil at (608) 267-1234.

Please note that Warranty Plan Administrators as defined in s. Ins 15.01 (4) (f), Wis. Adm. Code, must obtain a limited certificate of authority as a warranty plan.

No application will be considered completed until all items on the application form have been completed and all required forms have been completed, filed, and approved.

## Application Packet Forms

The application packet forms are available to be downloaded below. **Note**, however, that you will need an Adobe Acrobat Reader to view or print the application forms, which you can download at no cost from [Adobe](#).

[Application Packet Forms \(opens in new window\)](#)

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## Wisconsin Insurance Laws and Regulations

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## Designation of Registered Agent for Service of Process

A Designation of Registered Agent for Service of Process (OCI 12-014) form is available to be downloaded below. **Note**, however, that you will need an Adobe Acrobat Reader to view or print the application, which you can download at no cost from [Adobe](#).

[Designation of Registered Agent for Service of Process \(opens in new window\)](#)

[Fill and Print Version \(opens in new window\)](#)

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## Warranty Contract Submission Instructions and Forms

The instructions and forms for filing the warranty contracts for approval are available to be downloaded below, under the first two items under the heading "Policy Form Filing Instructions and Forms." **Note**, however, that you may need an Adobe Acrobat Reader to view or print the forms, which you can download at no cost from [Adobe](#).

[Policy Form Filing Instructions and Forms](#)

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Please direct questions to: [ocifinancial@wisconsin.gov](mailto:ocifinancial@wisconsin.gov) (please include your name, phone number, and e-mail address).

Last Updated: March 22, 2011

## Kunkel, Mark

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**From:** Froelich, Brooke  
**Sent:** Wednesday, January 25, 2012 5:06 PM  
**To:** Kunkel, Mark  
**Subject:** Service Contacts

**Attachments:** SCIC Dept Draft 1 25 12.rtf

Mark,

Here you go for (hopefully) the final draft. Thanks for all your work on this. Rep. Nygren and Sen. Lasee would like to introduce this as soon as possible. I will be around tomorrow morning to talk about timelines. Thanks



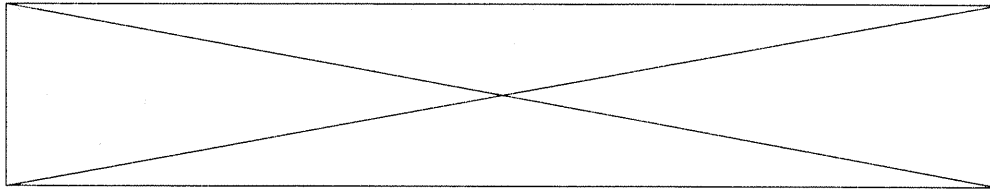
SCIC Dept Draft 1  
25 12.rtf (1...

*Brooke Froelich*

Legislative Assistant  
Office of State Representative John Nygren  
89th Assembly District  
Phone: 608.266.2343  
Email: brooke.froelich@legis.wi.gov

*Note: Please remember that all communications conducted through state resources are subject to Wisconsin's Open Records Law established in Wisconsin State Statute 19.35(1)*

**2011 Special Session  
2011 - 2012 LEGISLATURE**



Service contracts

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ENGROSSED 2011 BILL**

**AN ACT** *to amend* 71.45 (3) (a), 76.62 and 601.32 (1); and *to create* 100.70, 600.01 (1) (b) 12., 601.31 (1) (kr) and 632.19 of the statutes; **relating to:** regulating certain service contracts, granting rule-making authority, and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 3.** 100.70 of the statutes is created to read:

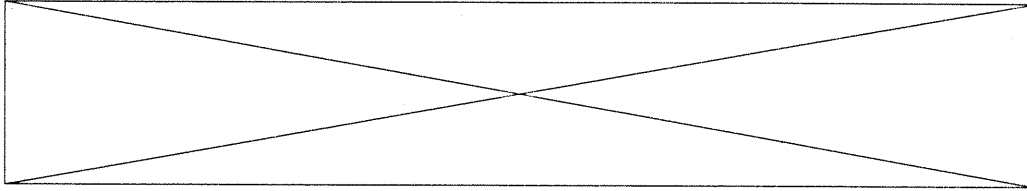
**100.70 Service contracts. (1) DEFINITIONS.** In this section:

(a) "Administration" includes any of the following activities performed on behalf of a provider: \_\_\_\_\_

**Deleted:** service contract



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1. approving or disapproving claims, paying claims or controlling the claims adjustment process;

2. arranging for or the controlling of the purchase of insurance associated with the offering of service contracts;

3. maintaining records or submitting filings on behalf of a provider required by this section; or

4. collecting provider fees from service contract sellers and remitting provider fees to the provider.

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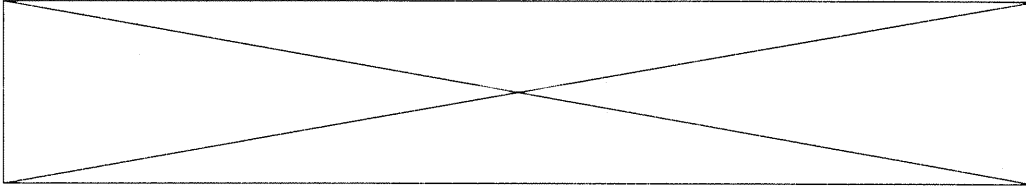
(b) "Administrator" means a person appointed by a provider under sub. (3)

(a) to be responsible for any or all of the administration of service contracts and compliance with the section.

(c) "Commissioner" means the commissioner of insurance.

(d) "Consumer" means an individual who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.

**ENGROSSED BILL**

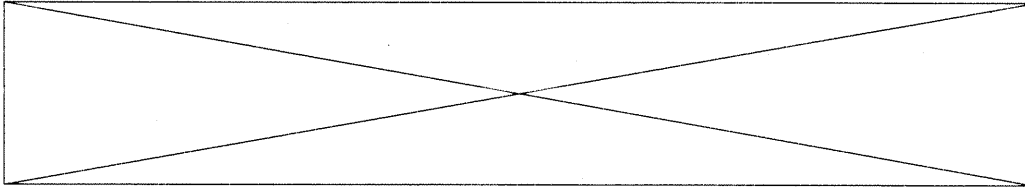


(e) "Maintenance agreement" means a contract of a specified duration that provides for scheduled maintenance only and does not include repair or replacement.

(f) "Motor vehicle manufacturer" means a person that does or satisfies any of the following:

1. Manufactures or produces motor vehicles and sells motor vehicles under its own name or label.
2. Is a subsidiary of the person who manufactures or produces motor vehicles.
3. Is a corporation which owns 100 percent of the person who manufactures or produces motor vehicles.
4. Manufactures or produces motor vehicles and sells motor vehicles under the trade name or label of another person who manufactures or produces motor vehicles.
5. Does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person who manufactures or produces motor vehicles and who sells motor vehicles under the licensor's trade name or label.

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(g) "Nonoriginal manufacturer's parts" means replacement parts for property that are not made for or by the original manufacturer of the property.

(h) (j) "Provider" means a person who is contractually obligated to a service contract holder under the terms of a service contract.

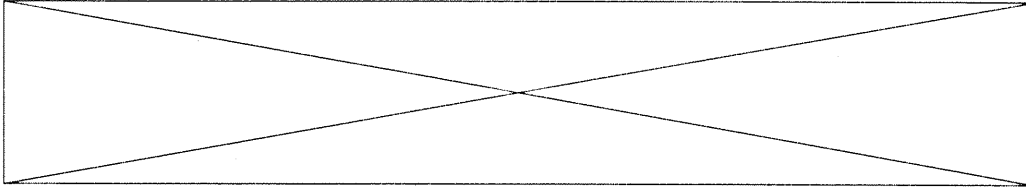
i (k) "Provider fee" means the consideration paid for a service contract.

j (l) "Reimbursement insurance policy" means  
K (1) a policy of insurance issued to a provider under the terms of the insured service contracts issued or sold by the provider that, in the event of the provider or administrator's nonperformance, will pay or perform on behalf of the provider or administrator all covered contractual obligations or services under the terms of the insured service contracts issued or sold by the provider; or

(2) a policy of insurance issued to a provider that, in addition to coverage described in par. (1), provides additional coverage that does not conflict with par. (1).

L (m) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property, or to provide indemnification for the repair, replacement, or maintenance of property, for the operational or structural failure

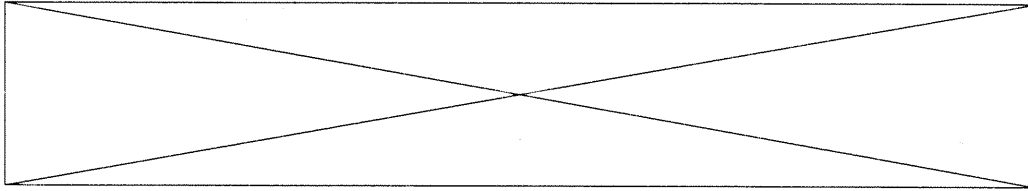
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of property, due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service and road hazard protection. "Service contract" includes a contract or agreement that provides for any of the following:

1. The repair, replacement, or maintenance of property or indemnification for the repair, replacement, or maintenance of property for damage resulting from a power surge or interruption.
2. The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented.
3. The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.
4. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing

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paint finish and without replacing vehicle body panels, sanding, bonding, or painting.

5. The repair of motor vehicle windshield chips or cracks, but does not include the replacement of the entire windshield.

6. The repair of damage to the interior components of a motor vehicle caused by wear and tear, but does not include the replacement of any part or component of a motor vehicle's interior.

(n) "Service contract holder" means a person who is the purchaser or holder of a service contract.

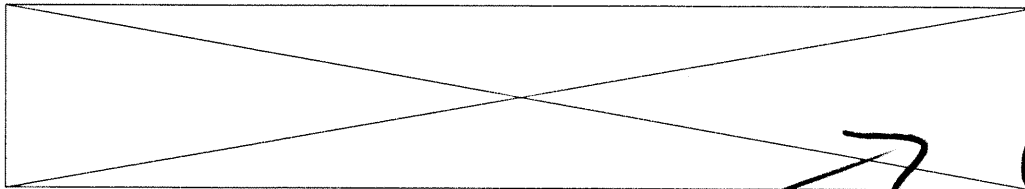
(o) "Service contract seller" means a person, including a real estate agent, who is engaged only in the selling or soliciting of a service contract but who is not acting as a provider or involved in the administration of service contracts.

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(p) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration, that is not negotiated or separated from the sale of the product or services, that is incidental to the sale of the product or services, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

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(2) APPLICABILITY. (a) This section does not apply to any of the following:

1. Warranties as defined in sub. (1) ~~(p)~~ or s. 100.203 (1) (g) or 100.205 (1) (g).

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2. Maintenance agreements.

3. Service contracts offered by public utilities on their devices for the transmission of public utility service to customers to the extent such service contracts are regulated by the public service commission.

4. Service contracts sold or offered for sale to persons other than consumers.

5. A person who has elected to be regulated as a warranty plan or warranty plan administrator in accordance with rules promulgated by the commissioner as permitted by subs. (8).

Deleted: Service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of \$100 or less, exclusive of sales tax.

(b) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products are exempt from this section, except for subs. ~~(4) (a) to (c), (f) to (p),~~ (5), and ~~(7),~~ and motor vehicle manufacturers offering service contracts on the motor vehicle manufacturer's products shall not be subject to registration under sub. (3)(d).

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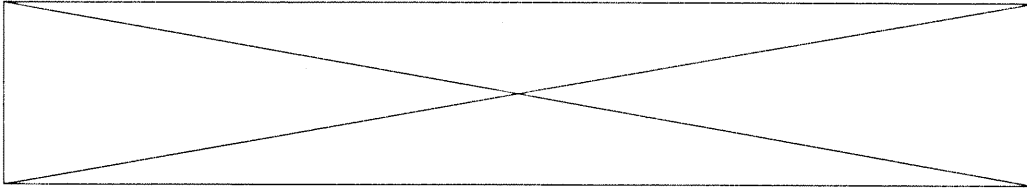
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(3) REQUIREMENTS FOR DOING BUSINESS. (a) *Appointment of administrator.*

A provider may, but is not required to, appoint an administrator to be responsible for any or all of the administration of service contracts and compliance with this

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section. Except as provided in subs. (5)(b)2., the acts of an administrator  
appointed by a provider under this paragraph shall be imputed to the provider.  
No person shall act as an administrator unless registered with the commissioner.  
All administrators of service contracts sold in this state shall register with the  
commissioner by providing the following information:

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1. The name, business address, and other information required by the  
commissioner for an employee or officer of the administrator that is designated by  
the applicant as the person responsible for the administration of service contracts  
in this state;

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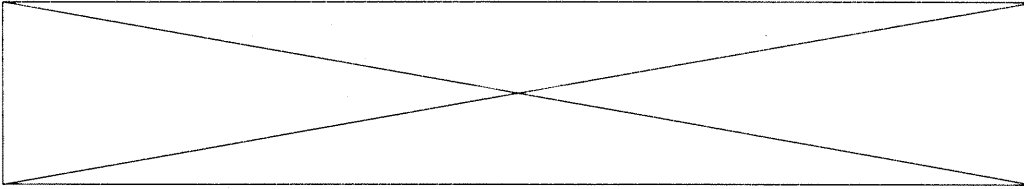
2. The location of the administrator's home office; and

3. The names of the service contract providers who the administrator  
performs administration for.

(b) *Receipt and copy of contract.* A service contract may not be issued, sold,  
or offered for sale in this state unless the provider of the service contract has done  
all of the following:

1. Provided a receipt for, or other written evidence of, the purchase of the  
service contract to the service contract holder.

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2. Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(c) *Sample contract.* A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions prior to the time of sale upon a request for the same by the consumer. A provider may comply with this paragraph by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to an Internet Web site containing a complete sample of the terms and conditions of the service contract.

(d) *Licensure.* 1. Except as provided in subd. 2., no person may act as a provider in this state unless the commissioner issues a license to the person under subd. 3.

2. A person acting as an authorized warranty plan or warranty plan administrator in this state on the publication date of this subdivision .... [LRB inserts date], and who, no later than the first day of the 12th month beginning after the publication date of this subdivision .... [LRB inserts date], submits an application for licensure and pays an initial license fee under subd. 3. may continue to act as a provider until the commissioner takes final action on the application. For purposes of this subdivision, an action is final if the action has

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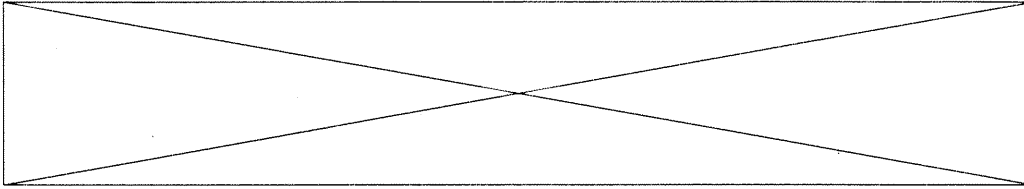
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been finally determined on appeal, if all time for filing an appeal or petition for review with respect to the action has expired, or if the action is not subject to judicial review.

3. A person seeking to act as a provider in this state shall submit an application for licensure with the commissioner consisting of:

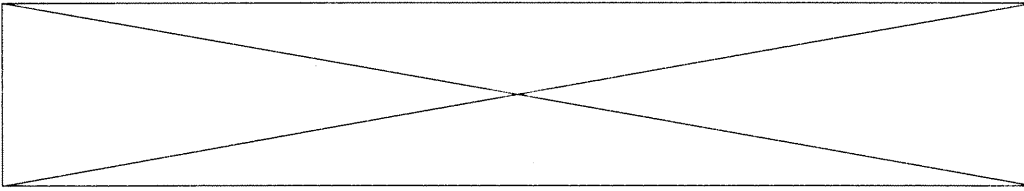
- a. the person's name;
- b. full business address;
- c. telephone number;
- d. a person in this state designated for service of process and that person's name and address;
- e. a copy of service contracts proposed to be sold in this state that comply with subsection (4);
- f. documentation of compliance with par. (e);
- g. the names of any administrator appointed by the applicant to assist with the administration of the provider's service contract business in this state; and
- h. a fee in the amount specified in s. 601.31 (1) (kr) upon initial licensure,

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4. Upon receipt of an application that complies with this subsection (3) as determined by the commissioner, the commissioner shall issue a license to the applicant.

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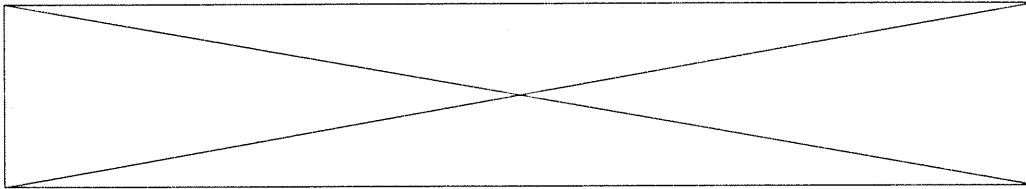
5. The information submitted with an applicant's application for licensure need only be updated by written notification to the commissioner if material changes occur in the license application on file with the commissioner.

6. Subsequent to initial licensure, a person licensed pursuant to this section shall pay annually to the commissioner a fee in the amount specified in s. 601.31(1)(kr).

(e) *Assurance of performance; in general.* In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with the requirements specified in par. (f) or (g).

(f) *Assurance of performance; insurance.* 1. A provider may satisfy par. (e) by insuring all service contracts under a reimbursement insurance policy filed with the commissioner under s. 631.20 that is issued by an insurer that is authorized to do business in this state and that at a minimum satisfies the following:

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a. states that if a provider insured under the policy does not provide, or reimburse or pay for, a service that is covered under a service contract insured under the policy within 60 days after a service contract holder provides proof of loss or in the event of insolvency or other financial impairment, the service contract holder may file a claim with the service contract reimbursement insurer for reimbursement, payment, or provision of the service;

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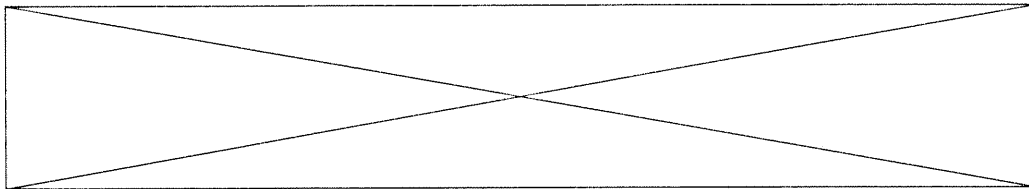
b. states that the insurer issuing the policy shall assume full responsibility for the administration and payment of claims and other obligations under service contracts insured under the policy in the event of the provider or designated administrator failure to do so;

c. state that the insurer issuing the policy may not terminate or nonrenew the policy unless the insurer has provided a written notice of termination or nonrenewal to the commissioner at least sixty (60) days prior to the termination or nonrenewal.

2. If an insurer issuing a reimbursement insurance policy is not in compliance with the financial standards applicable to an authorized insurer or if a reimbursement insurance policy utilized by a provider to satisfy the requirements of par. (3)④ is terminated, cancelled, or nonrenewed for any reason, the provider

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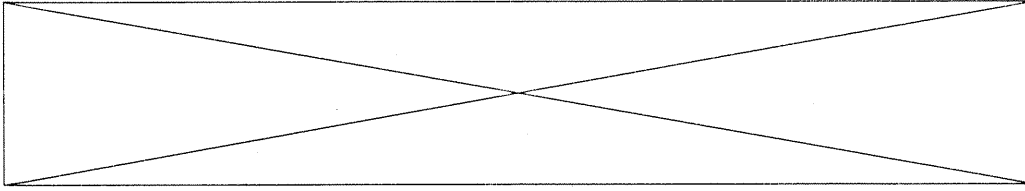
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whose service contracts are covered by the policy shall immediately notify the commissioner of such termination, cancellation, or nonrenewal and cease selling service contracts in this state until the affected provider has filed with the commissioner a new reimbursement insurance policy covering its obligations under service contracts sold in the state or has provided a deposit or irrevocable letter of credit in accordance with par. (3)(g). In addition, if a provider's reimbursement insurance policy insurer is not in compliance with the financial standards applicable to an authorized insurer or the reimbursement insurance policy is terminated, cancelled, or nonrenewed the commissioner may request that audited financial statements of the provider be filed. If a provider does not have audited financial statements, a provider may satisfy any such request by filing with the commissioner financial statements that are certified as accurate by a corporate officer of the provider.

3. An insurer issuing a service contract reimbursement insurance policy to a provider is considered to have received the premium for that insurance policy upon payment by a consumer of the fee for a service contract issued by the insured provider.

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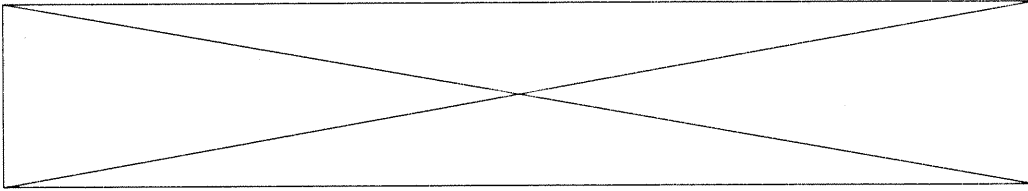
4. The termination or nonrenewal of a provider's service contract reimbursement insurance policy does not reduce the insurer's responsibility with respect to service contract issued by the provider before the date of the termination or nonrenewal.

5. Nothing in this par. (f) prevents, or limits the right of, an insurer that issued a service contract reimbursement insurance policy to seek indemnification from or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder any amount that the provider was obligated to pay under the service contract.

(g) *Assurance of performance; deposit or irrevocable letter of credit.* A provider may satisfy par. (e) by providing security to compensate any service contractholder who sustains a loss due to the failure of such provider to perform its obligations under a service contract as a result of insolvency or other financial impairment. The commissioner shall approve the amount and form of the security. The security shall be in one or a combination of the following:

1. Deposit of securities under s. 601.13. The deposit of securities shall be for the benefit of Wisconsin consumers.

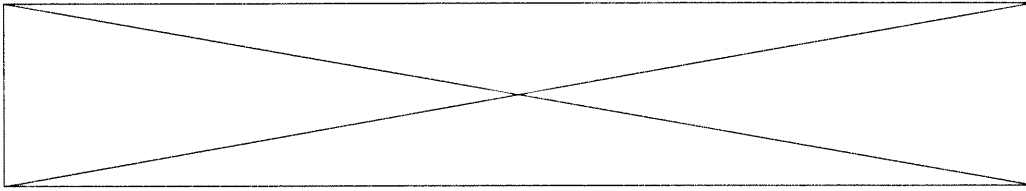
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2. An irrevocable letter of credit from a bank properly chartered by the federal government or any state and that is acceptable to the commissioner and issued for a term of at least 5 years with provision for renewal 2 years before termination. The letter of credit shall be payable to the commissioner or the commissioner's designee for the benefit of Wisconsin consumers upon a finding by the commissioner that a provider is insolvent or financially impaired and unable to meet its obligations under service contracts issued in Wisconsin. The provider shall notify the commissioner in writing of the nonrenewal of a letter of credit within 30 days after receiving a notice of nonrenewal. No provider whose letter of credit has been nonrenewed may offer or sell or renew any service contract on or after the date of nonrenewal until the provider obtains security satisfying the requirements of this subsection or alternative security satisfying the requirements of sub. (f).

(3) The security prescribed in this subsection shall be not less than \$50,000 plus 22.5% of the provider fees collected from service contractholders for all unexpired service contracts in force in Wisconsin on January 1 of the current year.

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(4) The security shall continue until released by the commissioner pursuant to a finding that it is not necessary for the reasonable protection of Wisconsin consumers.

(h) *Financial Statements.* A provider utilizing a deposit or irrevocable letter of credit as specified by par. (g) to satisfy the requirements of par. (e) shall, by the end of the fifth month following the end of the provider's most recent fiscal year, submit financial statements to the commissioner prepared on an accrual basis in accordance with generally accepted accounting principles and audited by an independent certified public account for the provider's preceding fiscal year.

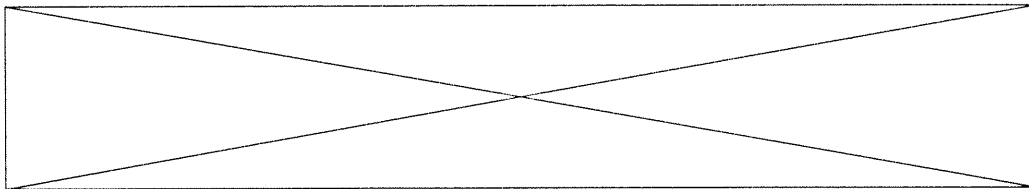
(i) *Commissioner limitation.* Except for the requirements specified in par. (e), no other financial security requirements shall be required by the commissioner for service contract providers.

(j) *Payment of Claims.* A service contract provider shall be subject to and shall pay claims under a service contract in accordance with s. 628.46(1) and (2).

(k) A service contract seller shall not be subject to licensure or registration under this section.

(4) FORM FILING AND REQUIRED DISCLOSURES. (a) Service contracts shall not be marketed, sold, offered for sale, issued, made, proposed to be made, or

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administered in this state unless the service contract has been filed with and approved by the commissioner in a manner and format as prescribed by the Commissioner. Contracts filed shall be filed in the final printed format or typed facsimile exactly as they will be offered for issuance or delivery in the state.

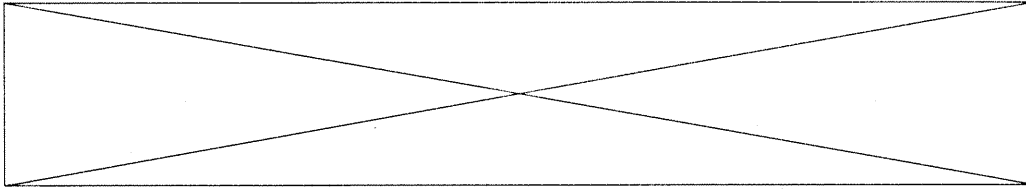
(b) Service contracts shall be written, printed, or typed in commonly understood language, legible, appropriately divided and captioned by its various sections and presented in a meaningful sequence. Contract filings shall be accompanied by a certificate of compliance and readability signed by an officer of the provider or administrator submitting the contract for review and approval.

(c) Service contracts shall contain the following statement printed in bold capitalized type: "THIS CONTRACT IS SUBJECT TO LIMITED REGULATION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE."

(d) Service contracts insured under a reimbursement insurance policy pursuant to sub. (3) (f) shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also state the name and address of the insurer and that if a provider does not provide, or reimburse or pay for, a service that is covered under a service contract within



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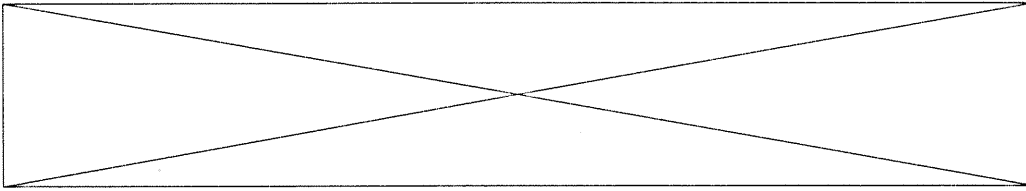
60 days after a contract holder provides proof of loss, or in the event of insolvency or other financial impairment the contract holder may file a claim directly to the service contract reimbursement insurer for reimbursement, payment, or provision of the service and instructions on how to file a claim.

(e) Service contracts not insured under a reimbursement insurance policy pursuant to sub. (3) (f) shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

(f) Service contracts shall state the name and address of the provider, and shall identify any administrator that is different from the provider, the service contract seller, and the service contract holder, if the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(g) Service contracts shall state the total purchase price and the terms under which service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

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(h) Service contracts shall identify any applicable deductible amount.

(i) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

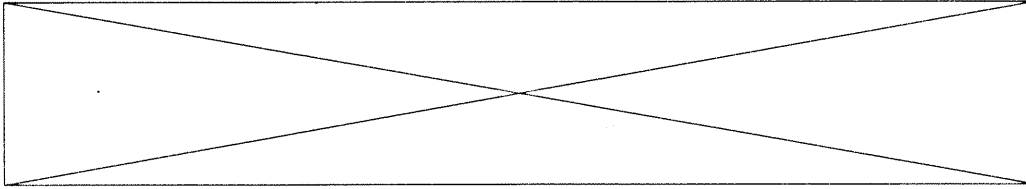
(j) Service contracts covering motor vehicles shall state whether the use of the nonoriginal manufacturers' parts is allowed.

(k) Service contracts shall state any applicable restrictions governing the transferability of the service contract.

(l) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by the provider. A service contract may only be cancelled by a provider for nonpayment of the provider fee, material misrepresentation by the contract holder to the provider or administrator, or for a substantial breach of duties by the service contract holder relating to the covered product or its use. A provider shall comply with the following when cancelling a service contract:

1. Written notice shall be mailed to the service contract holder at the last known address of the service contract holder contained in the records of the provider at least 5 days prior to cancellation by the provider. ;

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2. The notice required by this par. (l) shall state the effective date of the cancellation and the reason for the cancellation;

3. If a service contract is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid; and

4. A provider may charge a reasonable administrative fee for cancellation, which may not exceed 10 percent of the provider fee.

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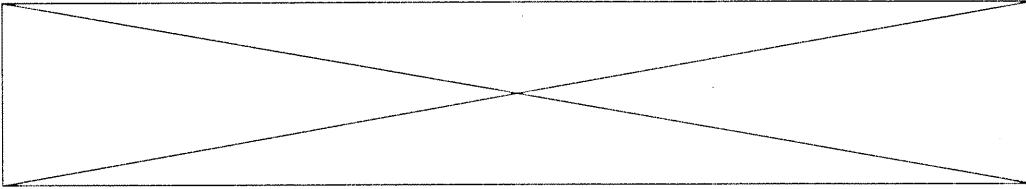
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(m) Service contracts shall set forth all of the obligations and duties of the service contract holder, including the duty to protect against any further damage and any requirement to follow the owner's manual.

(n) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions. Service contracts may, but are not required to, cover damage resulting from rust, corrosion, or damage caused by a noncovered part or system.

(o) Service contracts shall require the provider to permit the service contract holder to return the service contract within 20 days of the date the service contract was mailed to the service contract holder, or within 10 days of delivery if

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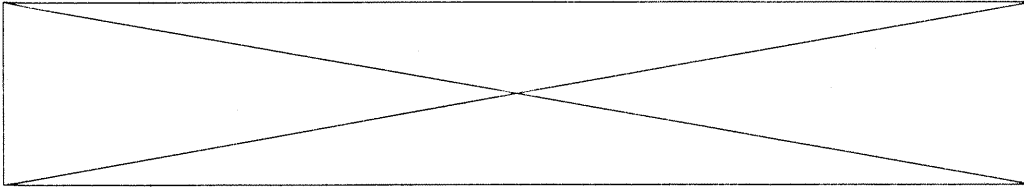
the service contract is delivered to the service contract holder at the time of sale, or within a longer time period permitted under the service contract. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, with the full purchase price of the service contract. Unless otherwise stated in a service contract, the right to void the service contract under this subdivision is not transferable and shall apply only to the original service contract purchaser. If a provider does not pay or credit a refund within 45 days after the return of a service contract to the provider, the provider shall pay a 10 percent per month penalty of the refund amount outstanding which the provider shall add to amount of the refund.

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(p) Service contracts shall provide that, subsequent to the time period specified in par. (o) for voiding a service contract or if a claim has been made under a service contract within such time period, a service contract holder may cancel the service contract and the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid. A provider may charge a reasonable administrative fee for the cancellation, which

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may not exceed 10 percent of the gross provider fee paid by the service contract holder.

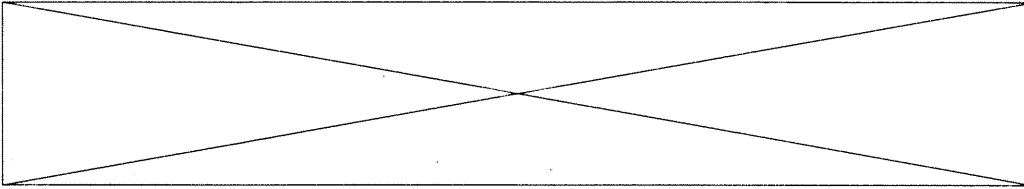
(q) Any arbitration clause contained in a service contract shall be conditioned upon the mutual agreement of the provider and service contract holder to resolve any dispute by arbitration.

(r) In the event of a total loss of property covered by a service contract that is not covered by a replacement of the property pursuant to the terms of the contract, a consumer shall be entitled to cancel the service contract and receive a pro rata refund of any unearned provider fee, less any claims paid.

(5) PROHIBITED ACTS. (a) 1. A provider shall not use in its name used in this state the words "insurance," "casualty," "surety," or "mutual" or any other words descriptive of the insurance, casualty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider. The word "guaranty" or a similar word may be used by a provider.

2. Subdivision 1. does not apply to a provider that was using any language prohibited under subd. 1. in its name used in this state prior to the effective date of this subdivision .... [LRB inserts date]. Such a provider shall include in its

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service contracts a statement in substantially the following form: "This agreement is not an insurance contract."

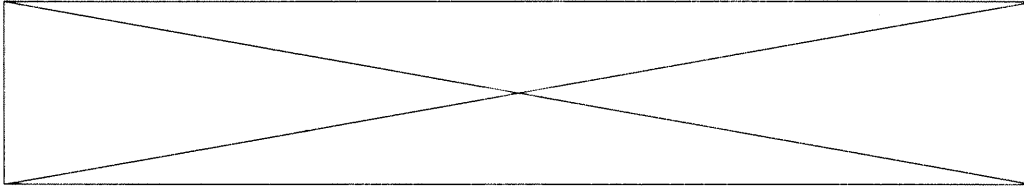
(b) 1. No provider, administrator, service contract seller or a provider's representative may make or cause to be made any communication relating to a service contract, the service contract business, insurance business, any insurer, any administrator or any provider which contains false or misleading information, including information that is misleading due to incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or willfully refraining from making a proper entry, are "communications" within the meaning of this paragraph. No provider or administrator may use any business name, slogan, emblem or related device that is misleading or likely to cause the provider or administrator to be mistaken for another provider or administrator already in business.

**Deleted:** A provider, administrator, or a provider's representative shall not in its service contracts or literature or with respect to its service contract business make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

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2. If an administrator or representative of a provider distributes cards or documents, exhibits a sign or publishes an advertisement which violates par. 1, having reference to a particular provider that the administrator or representative represents, such violation creates a rebuttable presumption that the violation was also committed by the provider.

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(c) A person, including a bank, savings and loan association, lending institution, manufacturer, or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

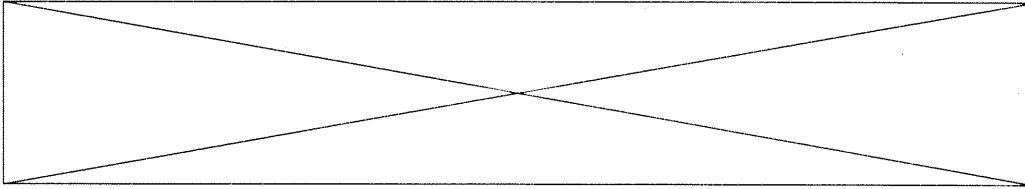
(d) A motor vehicle service contract provider or its representative shall not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive, or misleading statement with respect to any of the following:

1. The provider's affiliation with a motor vehicle manufacturer.
2. The provider's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.
3. The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.

4. A requirement that a motor vehicle owner ~~purchase a new motor vehicle~~ service contract with the provider in order to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty.

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(6) RECORD-KEEPING REQUIREMENTS. (a) 1. A provider shall keep accurate accounts, books, and records concerning transactions regulated under this section.

2. A provider's accounts, books, and records shall include all of the following:

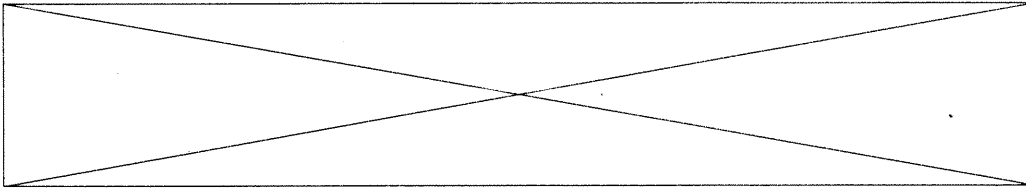
- a. Copies of each type of service contract sold.
- b. The name and address of each service contract holder that has furnished such information to the provider.
- c. A list of the locations where service contracts are marketed, sold, or offered for sale in this state.
- d. Written claims files which shall contain at least the dates, description, and amount paid or denied of claims related to the service contracts.
- e. The effective date, expiration date, name of the selling person, and provider fee paid for each contract sold in this state.

3. Except as provided in par. (b), a provider shall retain all records required to be maintained under this paragraph for a service contract for at least one year after the period of coverage specified in the contract has expired.

4. The records required under this paragraph may be, but are not required to be, maintained on a computer disk or other record-keeping technology. If the



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records are maintained in other than hard copy, the records shall be capable of duplication to electronic or legible hard copy at the request of the commissioner.

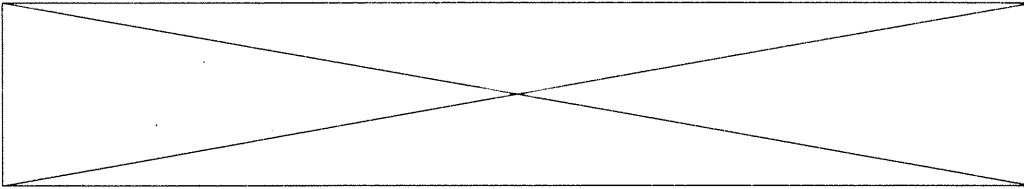
(b) A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state.

(7) ENFORCEMENT PROVISIONS. (a) The commissioner may conduct examinations of providers, administrators, or other persons in accordance with ss. 601.43-.45 to enforce the provisions of this section and protect service contract holders in this state. Upon request of the commissioner, a provider shall make all accounts, books, and records concerning service contracts sold by the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance with this section.

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(b) The commissioner may take action in accordance with s. 601.41 and ss. 601.61 to 601.73 which is necessary or appropriate to enforce the provisions of this section and the commissioner's rules and orders, and to protect service contract holders in this state. A provider shall be subject to the reporting and reply requirements of s. 601.42, as applicable.

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(8) APPLICABILITY. A person may elect to operate in this state in accordance with the provisions set forth in this subchapter. Alternatively, a person may seek to or continue operating as a warranty plan or warranty plan administrator in accordance with rules promulgated by the commissioner. A person licensed as a warranty plan or warranty plan administrator electing to operate under this subchapter or a service contract provider or administrator seeking to do business in this state shall be governed exclusively by the provisions set forth herein.

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SECTION 4. 600.01 (1) (b) 12. of the statutes is created to read:

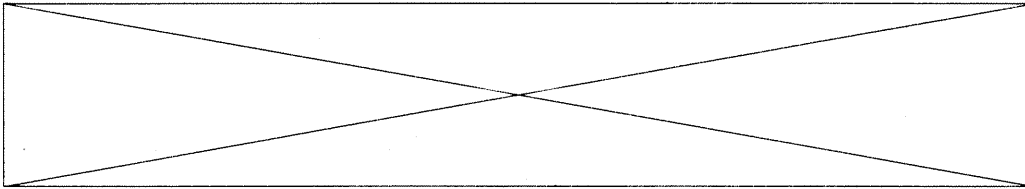
600.01 (1) (b) 12. Providers, service contract sellers, or administrators of service contracts under s. 100.70.

SECTION 5. 601.31 (1) (kr) of the statutes is created to read:

601.31 (1) (kr) For processing and maintaining license records under s. 100.70 (3) (d) 3., \$400 upon initial licensure and \$100 annually thereafter, unless the commission specifies a different amount by rule.

SECTION 8. Initial applicability.

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(1) SERVICE CONTRACTS. The treatment of section 100.70 of the statutes first applies to service contracts that are issued, sold, or offered for sale, on the effective date of this subsection.

**SECTION 9. Effective date.**

(1) This act takes effect on the first day of the 12th month beginning after publication.

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(END)

**Kunkel, Mark**

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**From:** Stephen McDaniel [Stephen@blanklaw.com]  
**Sent:** Thursday, January 26, 2012 3:26 PM  
**To:** Kunkel, Mark  
**Subject:** Does this look better?  
**Attachments:** SCIC Dept Draft 1.25.12.rtf

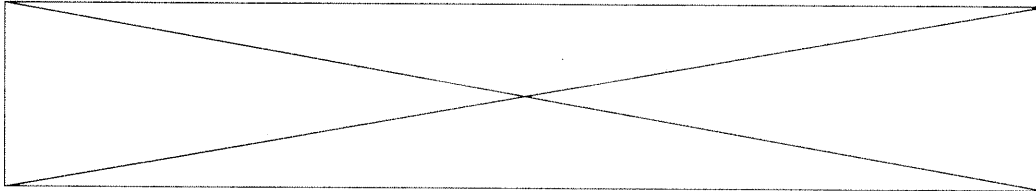
**STEPHEN K. MCDANIEL, ATTORNEY**

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2. Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(c) *Sample contract.* A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions prior to the time of sale upon a request for the same by the consumer. A provider may comply with this paragraph by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to an Internet Web site containing a complete sample of the terms and conditions of the service contract.

(d) *Licensure.* 1. Except as provided in subd. 2., no person may act as a provider in this state unless the commissioner issues a license to the person under subd. 3.

2. A person acting as a warranty plan or warranty plan administrator in this state on the effective date of this subdivision in accordance with regulations issued by the commissioner .... [LRB inserts date], and who, pursuant to subd. (8), elects to operate in this state in accordance with the provisions set forth in this subchapter shall, no later than the effective date of this subdivision, submit an application for licensure and pay, an initial license fee under subd. 3. and may continue to act as a warranty plan or warranty plan administrator until the

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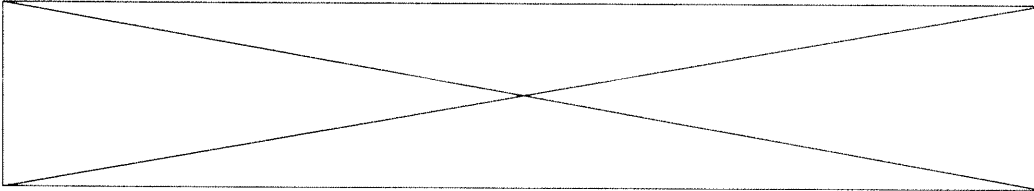
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commissioner takes final action on the application. For purposes of this subdivision, an action is final if the action has been finally determined on appeal, if all time for filing an appeal or petition for review with respect to the action has expired, or if the action is not subject to judicial review.

3. A person seeking to act as a provider in this state shall submit an application for licensure with the commissioner consisting of:

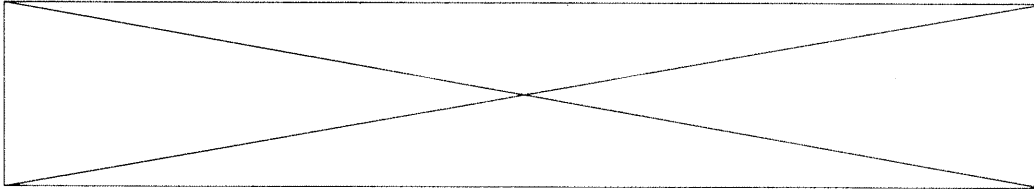
- a. the person's name;
- b. full business address;
- c. telephone number;
- d. a person in this state designated for service of process and that person's name and address;
- e. a copy of service contracts proposed to be sold in this state that comply with subsection (4);
- f. documentation of compliance with par. (e);
- g. the names of any administrator appointed by the applicant to assist with the administration of the provider's service contract business in this state; and
- h. a fee in the amount specified in s. 601.31 (1) (kr) upon initial licensure,

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(8) APPLICABILITY. A person may elect to operate in this state in accordance with the provisions set forth in this subchapter. Alternatively, a person may seek to or continue operating as a warranty plan or warranty plan administrator in accordance with rules promulgated by the commissioner. A person licensed as a warranty plan or warranty plan administrator electing to operate under this subchapter or a service contract provider or administrator seeking to do business in this state shall be governed exclusively by the provisions set forth herein.

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SECTION 8. Initial applicability.